

Utah Code  
**Utah Code of Criminal Procedure**  
Title 77

**Bail**

Title 77, Chapter 20

(Text is current through the 2015 General Session)

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**77-20-1. Right to bail -- Denial of bail -- Hearing.**

- (1) A person charged with or arrested for a criminal offense shall be admitted to bail as a matter of right, except if the person is charged with a:
  - (a) capital felony, when the court finds there is substantial evidence to support the charge;
  - (b) felony committed while on probation or parole, or while free on bail awaiting trial on a previous felony charge, when the court finds there is substantial evidence to support the current felony charge;
  - (c) felony when there is substantial evidence to support the charge and the court finds by clear and convincing evidence that the person would constitute a substantial danger to any other person or to the community, or is likely to flee the jurisdiction of the court, if released on bail; or
  - (d) felony when the court finds there is substantial evidence to support the charge and it finds by clear and convincing evidence that the person violated a material condition of release while previously on bail.

- (2) Any person who may be admitted to bail may be released either on the person's own recognizance or upon posting bail, on condition that the person appear in court for future court proceedings in the case, and on any other conditions imposed in the discretion of the magistrate or court that will reasonably:
  - (a) ensure the appearance of the accused;
  - (b) ensure the integrity of the court process;
  - (c) prevent direct or indirect contact with witnesses or victims by the accused, if appropriate; and
  - (d) ensure the safety of the public.
- (3)
  - (a) Except as otherwise provided, the initial order denying or fixing the amount of bail shall be issued by the magistrate or court issuing the warrant of arrest.
  - (b) A magistrate may set bail upon determining that there was probable cause for a warrantless arrest.
  - (c) A bail commissioner may set bail in a misdemeanor case in accordance with Sections 10-3-920 and 17-32-1.
  - (d) A person arrested for a violation of a jail release agreement or jail release order issued pursuant to Section 77-36-2.5:
    - (i) may not be released before the accused's first judicial appearance; and
    - (ii) may be denied bail by the court under Subsection 77-36-2.5(8) or (12).
- (4) The magistrate or court may rely upon information contained in:
  - (a) the indictment or information;
  - (b) any sworn probable cause statement;
  - (c) information provided by any pretrial services agency; or
  - (d) any other reliable record or source.
- (5)
  - (a) A motion to modify the initial order may be made by a party at any time upon notice to the opposing party sufficient to permit the opposing party to prepare for hearing and to permit any victim to be notified and be present.
  - (b) Hearing on a motion to modify may be held in conjunction with a preliminary hearing or any other pretrial hearing.
  - (c) The magistrate or court may rely on information as provided in Subsection (4) and may base its ruling on evidence provided at the hearing so long as each party is provided an opportunity to present additional evidence or information relevant to bail.
- (6) Subsequent motions to modify bail orders may be made only upon a showing that there has been a material change in circumstances.
- (7) An appeal may be taken from an order of any court denying bail to the Supreme Court, which shall review the determination under Subsection (1).

- (8) For purposes of this section, any arrest or charge for a violation of Section 76-5-202, Aggravated murder, is a capital felony unless:
- (a) the prosecutor files a notice of intent to not seek the death penalty; or
  - (b) the time for filing a notice to seek the death penalty has expired and the prosecutor has not filed a notice to seek the death penalty.

**77-20-3. Release on own recognizance -- Changing amount of bail or conditions of release.**

- (1) Any person who may be admitted to bail may likewise be released on his own recognizance in the discretion of the magistrate or court.
- (2) After releasing the defendant on his own recognizance or admitting the defendant to bail, the magistrate or court may:
  - (a) impose bail or increase or decrease the amount of the bail; and
  - (b) impose or change the conditions of release under Subsection 77-20-1(2).

**77-20-4. Bail to be posted in cash, by credit or debit card, or by written undertaking.**

- (1) Bail may be posted:
  - (a) in cash;
  - (b) by written undertaking with or without sureties at the discretion of the magistrate; or
  - (c) by credit or debit card, at the discretion of the judge or bail commissioner.
- (2) Bail may not be accepted without receiving in writing at the time the bail is posted the current mailing address and telephone number of the surety.
- (3) Bail posted by debit or credit card, less the fee charged by the financial institution, shall be tendered to the courts.
- (4) Bail refunded by the court may be refunded by credit to the debit or credit card, or cash. The amount refunded shall be the full amount received by the court under Subsection (3), which may be less than the full amount of the bail set by the court.
- (5) Before refunding bail that is posted by the defendant in cash, by credit card, or by debit card, the court may apply the amount posted toward accounts receivable, as defined in Section 76-3-201.1, that are owed by the defendant in the priority set forth in Section 77-38a-404.

**77-20-5. Qualifications of sureties -- Justification -- Requirements of undertaking.**

- (1) The sureties on written undertakings shall be real or personal property holders within the state. The qualifications and bonding limits of bail bond sureties who are engaged in the for-profit, commercial business of posting property bonds shall be established by

the Bail Bond Surety Oversight Board and rules adopted by the insurance commissioner. All other sureties shall collectively have a net worth of at least twice the amount of the undertaking, exclusive of property exempt from execution.

- (2) Each surety shall justify by affidavit upon the undertaking and each may be further examined upon oath by the magistrate or by the prosecuting attorney in the presence of a magistrate, in respect to his property and net worth.
- (3) The undertaking shall, in addition to other requirements, provide that each surety submits himself to the jurisdiction of the court and irrevocably appoints the clerk of the court as his agent upon whom any papers affecting his liability on the undertaking may be served, and that his liability may be enforced on motion and upon such notice as the court may require without the necessity of an independent action.

**77-20-7. Duration of liability on undertaking -- Notices to sureties -- Exoneration if charges not filed.**

- (1) (a) Except as provided in Subsection (1)(b), the principal and the sureties on the written undertaking are liable on the undertaking during all proceedings and for all court appearances required of the defendant up to and including the surrender of the defendant for sentencing, irrespective of any contrary provision in the undertaking. Any failure of the defendant to appear when required is a breach of the conditions of the undertaking or bail and subjects it to forfeiture, regardless of whether or not notice of appearance was given to the sureties. Upon sentencing the bond shall be exonerated without motion.
- (b) If the sentence includes a commitment to a jail or prison, the bond shall be exonerated when the defendant appears at the appropriate jail or prison, unless the judge doesn't require the defendant to begin the commitment within seven days, in which case the bond is exonerated upon sentencing.
- (c) For purposes of this section, an order of the court accepting a plea in abeyance agreement and holding that plea in abeyance pursuant to Title 77, Chapter 2a, Pleas in Abeyance, is considered to be the same as a sentencing upon a guilty plea.
- (d) Any suspended or deferred sentencing is not the responsibility of the surety and the bond is exonerated without any motion, upon acceptance of the court and the defendant of a plea in abeyance, probation, fine payments, post sentencing reviews, or any other deferred sentencing reviews or any other deferred sentencing agreement.
- (e) If a surety issues a bond after the sentencing, the surety is liable on the undertaking during all proceedings and for all court appearances required of the

defendant up to and including the defendant's appearance to commence serving the sentence imposed under Subsection (1).

- (2) If no information or indictment charging a person with an offense is filed in court within 120 days after the date of the bail undertaking or cash receipt, the court may relieve a person from conditions of release at the person's request, and the bond or undertaking is exonerated without further order of the court unless the prosecutor requests an extension of time before the end of the 120-day period by:
  - (a) filing a notice for extension with the court; and
  - (b) serving the notice for extension upon the sureties and the person or his attorney.
- (3) A court may extend bail and conditions of release for good cause.
- (4) Subsection (2) does not prohibit the filing of charges against a person at any time.
- (5) If the court does not set on a calendar any hearings on a case within 18 months of the last court docket activity on a case, the undertaking of bail is exonerated without motion.

**77-20-8. Grounds for detaining or releasing defendant on conviction and prior to sentence.**

- (1) Upon conviction, by plea or trial, the court shall order that the convicted defendant who is waiting imposition or execution of sentence be detained, unless the court finds by clear and convincing evidence presented by the defendant that the defendant is not likely to flee the jurisdiction of the court, and will not pose a danger to the physical, psychological, or financial and economic safety or well-being of any other person or the community if released.
- (2) If the court finds the defendant does not need to be detained, the court shall order the release of the defendant on suitable conditions, which may include the conditions under Subsection 77-20-10(2).

**77-20-8.5. Sureties -- Surrender of defendant -- Arrest of defendant.**

- (1) (a) Sureties may at any time prior to a defendant's failure to appear surrender the defendant and obtain exoneration of bail, by notifying the clerk of the court in which the bail was posted of the defendant's surrender and requesting exoneration. Notification shall be made immediately following the surrender by surface mail, electronic mail, or fax.
- (b) To effect surrender, a certified copy of the surety's undertaking from the court in which it was posted or a copy of the bail agreement with the defendant shall be delivered to the on-duty jailer, who shall detain the defendant in the on-duty jailer's custody as upon a commitment, and shall in writing acknowledge the surrender

upon the copy of the undertaking or bail agreement. The certified copy of the undertaking or copy of the bail agreement upon which the acknowledgment of surrender is endorsed shall be filed with the court. The court may then, upon proper application, order the undertaking exonerated and may order a refund of any paid premium, or part of a premium, as it finds just.

- (2) For the purpose of surrendering the defendant, the sureties may:
  - (a) arrest the defendant:
    - (i) at any time before the defendant is finally exonerated; and
    - (ii) at any place within the state; and
  - (b) surrender the defendant to any county jail booking facility in Utah.
- (3) An arrest under this section is not a basis for exoneration of the bond under Section 77-20b-101.
- (4) A surety acting under this section is subject to Title 53, Chapter 11, Bail Bond Recovery Act.

#### **77-20-9. Disposition of forfeitures.**

If by reason of the neglect of the defendant to appear, money deposited instead of bail or money paid by sureties on surety bond is forfeited and the forfeiture is not discharged or remitted, the clerk with whom it is deposited or paid shall, immediately after final adjournment of the court, pay over the money forfeited as follows:

- (1) the forfeited bail cases in or appealed from district courts shall be distributed as provided in Section 78A-5-110;
- (2) the forfeited bail in cases in precinct justice courts or in municipal justice courts shall be distributed as provided in Sections 78A-7-120 and 78A-7-121;
- (3) the forfeited bail in cases in justice courts where the offense is not triable in that court shall be paid into the General Fund; and
- (4) the forfeited bail in cases not provided for in this section shall be paid 50% to the state treasurer and the remaining 50% to the county treasurer in the county in which the violation occurred or the forfeited bail is collected.

#### **77-20-10. Grounds for detaining defendant while appealing the defendant's conviction -- Conditions for release while on appeal.**

- (1) The court shall order that a defendant who has been found guilty of an offense in a court of record and sentenced to a term of imprisonment in jail or prison, and who has filed an appeal or a petition for a writ of certiorari, be detained, unless the court finds:
  - (a) the appeal raises a substantial question of law or fact likely to result in:
    - (i) reversal;

- (ii) an order for a new trial; or
    - (iii) a sentence that does not include a term of imprisonment in jail or prison;
  - (b) the appeal is not for the purpose of delay; and
  - (c) by clear and convincing evidence presented by the defendant that the defendant is not likely to flee the jurisdiction of the court, and will not pose a danger to the physical, psychological, or financial and economic safety or well-being of any other person or the community if released.
- (2) If the court makes a finding under Subsection (1) that justifies not detaining the defendant, the court shall order the release of the defendant, subject to conditions that result in the least restrictive condition or combination of conditions that the court determines will reasonably assure the appearance of the person as required and the safety of any other person and the community. The conditions may include that the defendant:
- (a) post appropriate bail;
  - (b) execute a bail bond with a bail bond surety under Title 31A, Chapter 35, Bail Bond Act, in an amount necessary to assure the appearance of the defendant as required;
  - (c)
    - (i) execute a written agreement to forfeit, upon failing to appear as required, designated property, including money, as is reasonably necessary to assure the appearance of the defendant; and
    - (ii) post with the court indicia of ownership of the property or a percentage of the money as the court may specify;
  - (d) not commit a federal, state, or local crime during the period of release;
  - (e) remain in the custody of a designated person who agrees to assume supervision of the defendant and who agrees to report any violation of a release condition to the court, if the designated person is reasonably able to assure the court that the defendant will appear as required and will not pose a danger to the safety of any other person or the community;
  - (f) maintain employment, or if unemployed, actively seek employment;
  - (g) maintain or commence an educational program;
  - (h) abide by specified restrictions on personal associations, place of abode, or travel;
  - (i) avoid all contact with the victims of the offense and with any witnesses who testified against the defendant or potential witnesses who may testify concerning the offense if the appeal results in a reversal or an order for a new trial;
  - (j) report on a regular basis to a designated law enforcement agency, pretrial services agency, or other designated agency;
  - (k) comply with a specified curfew;

- (l) not possess a firearm, destructive device, or other dangerous weapon;
  - (m) not use alcohol, or any narcotic drug or other controlled substances except as prescribed by a licensed medical practitioner;
  - (n) undergo available medical, psychological, or psychiatric treatment, including treatment for drug or alcohol dependency, and remain under the supervision of or in a specified institution if required for that purpose;
  - (o) return to custody for specified hours following release for employment, schooling, or other limited purposes;
  - (p) satisfy any other condition that is reasonably necessary to assure the appearance of the defendant as required and to assure the safety of any other person and the community; and
  - (q) if convicted of committing a sexual offense or an assault or other offense involving violence against a child 17 years of age or younger, is limited or denied access to any location or occupation where children are, including but not limited to:
    - (i) any residence where children are on the premises;
    - (ii) activities, including organized activities, in which children are involved; and
    - (iii) locations where children congregate, or where a reasonable person should know that children congregate.
- (3) The court may, in its discretion, amend an order granting release to impose additional or different conditions of release.
- (4) If defendant has been found guilty of an offense in a court not of record and files a timely notice of appeal pursuant to Subsection 78A-7-118(1) for a trial de novo, the court shall stay all terms of a sentence, unless at the time of sentencing the judge finds by a preponderance of the evidence that the defendant poses a danger to another person or the community.
- (5) If a stay is ordered, the court may order post-conviction restrictions on the defendant's conduct as appropriate, including:
- (a) continuation of any pre-trial restrictions or orders;
  - (b) sentencing protective orders under Section 77-36-5.1;
  - (c) drug and alcohol use;
  - (d) use of an ignition interlock; and
  - (e) posting appropriate bail.
- (6) The provisions of Subsections (4) and (5) do not apply to convictions for an offense under Title 41, Chapter 6a, Part 5, Driving Under the Influence and Reckless Driving.
- (7) Any stay authorized by Subsection (4) is lifted upon the dismissal of the appeal by the district court.